

AMENDED IN ASSEMBLY JULY 8, 2009

AMENDED IN ASSEMBLY JUNE 23, 2009

AMENDED IN SENATE MAY 20, 2009

AMENDED IN SENATE APRIL 27, 2009

**SENATE BILL**

**No. 660**

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**Introduced by Senator Wolk**

February 27, 2009

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An act to amend Section 1923.5 of, and to add Section 1923.1 to, the Civil Code, relating to reverse mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 660, as amended, Wolk. Reverse mortgages.

Existing law defines and regulates reverse mortgage loans and provides a disclosure notice that a lender must provide an applicant, which informs the applicant that a reverse mortgage is a complex financial arrangement and advises the applicant of the wisdom of seeking financial counseling before entering the agreement. Existing law requires a lender to refer a prospective borrower to a housing counseling agency for counseling, as specified, prior to accepting a final and complete application for a reverse mortgage or assessing any fees, and prohibits a lender from accepting a final and complete reverse mortgage application without first receiving from the applicant, or his or her representative, a certification that the applicant has received loan counseling.

This bill would provide that a lender, broker, person, or entity ~~who~~ *that* recommends the purchase of a reverse mortgage in anticipation of financial gain owes the prospective borrower a duty of honesty, good faith, and fair dealing. The bill would prohibit a lender, broker, person,

or entity from being deemed to have breached this duty based on the actions or omissions of the counseling agency. The bill would revise the disclosure notice provided to reverse mortgage applicants and would prohibit a lender from accepting a reverse mortgage loan application unless the lender provides the prospective borrower, prior to his or her meeting with the counseling agency, with a specified written checklist that conspicuously alerts the prospective borrower of subjects that he or she should discuss with the loan counselor. This bill would require that the counselor and the prospective borrower sign the checklist and return it to the lender. The bill would prohibit approval of the loan application until the signed checklist is provided to the lender. The bill would require that a copy of the checklist be provided to the borrower.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1923.1 is added to the Civil Code, to  
2     read:  
3     1923.1. (a) Any lender, broker, person, or entity who  
4     recommends the purchase of a reverse mortgage in anticipation of  
5     financial gain owes the prospective borrower a duty of honesty,  
6     good faith, and fair dealing. The duties set forth in this section  
7     shall not be construed to limit or narrow any other duty of a lender,  
8     broker, person, or entity. *Compliance with this chapter and all*  
9     *other applicable law may be cited as evidence demonstrating*  
10    *compliance with the duties of this subdivision.*  
11    (b) A lender, broker, person, or entity shall not be deemed to  
12    have breached the duty set forth in subdivision (a) based on the  
13    actions or omissions of the counseling agency pursuant to this  
14    chapter.  
15    SEC. 2. Section 1923.5 of the Civil Code is amended to read:  
16    1923.5. (a) No reverse mortgage loan application shall be  
17    taken by a lender unless the loan applicant, prior to receiving  
18    counseling, has received from the lender the following plain  
19    language statement in conspicuous 16-point type or larger, advising  
20    the prospective borrower about counseling prior to obtaining the  
21    reverse mortgage loan:  
22

1                   IMPORTANT NOTICE  
2           TO REVERSE MORTGAGE LOAN APPLICANT

3  
4   A REVERSE MORTGAGE IS A COMPLEX FINANCIAL  
5   TRANSACTION. IF YOU DECIDE TO OBTAIN A REVERSE  
6   MORTGAGE LOAN, YOU WILL SIGN BINDING LEGAL  
7   DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL AND  
8   FINANCIAL IMPLICATIONS FOR YOU AND YOUR ESTATE.  
9   IT IS THEREFORE IMPORTANT TO UNDERSTAND THE  
10  TERMS OF THE REVERSE MORTGAGE AND ITS EFFECT.  
11  BEFORE ENTERING INTO THIS TRANSACTION, YOU ARE  
12  REQUIRED TO CONSULT WITH AN INDEPENDENT LOAN  
13  COUNSELOR. A LIST OF APPROVED COUNSELORS WILL  
14  BE PROVIDED TO YOU BY THE LENDER.  
15  YOU MAY ALSO WANT TO DISCUSS YOUR DECISION  
16  WITH FAMILY MEMBERS OR OTHERS ON WHOM YOU  
17  RELY FOR FINANCIAL ADVICE.

18  
19   (b) (1) In addition to the plain statement notice described in  
20   subdivision (a), no reverse mortgage loan application shall be taken  
21   by a lender unless the lender provides the prospective borrower,  
22   prior to his or her meeting with a counseling agency on reverse  
23   mortgages, with a written checklist that conspicuously alerts the  
24   prospective borrower, in 12-point type or larger, that he or she  
25   should discuss with the agency counselor the following issues:

26   (A) How unexpected medical or other events that cause the  
27   prospective borrower to move out of the home earlier than  
28   anticipated will impact the total loan cost.

29   (B) The extent to which the prospective borrower's financial  
30   needs would be better met by options other than a reverse  
31   mortgage, including, but not limited to, less costly home equity  
32   lines of credit, property tax deferral programs, or governmental  
33   aid programs.

34   (C) Whether the prospective borrower intends to use the  
35   proceeds of the reverse mortgage to purchase an annuity or other  
36   insurance products and the consequences of doing so.

37   (D) The effect of repayment of, or inability to repay, the loan  
38   on residents who are not borrowers after all borrowers have died  
39   or permanently left the home.

1 (E) The prospective borrower's ability to finance routine or  
2 catastrophic home repairs, especially if maintenance is a factor  
3 that may determine when the mortgage becomes payable.

4 (F) The impact that the reverse mortgage may have on the  
5 prospective borrower's tax obligations, eligibility for government  
6 assistance programs, and the effect that losing equity in the home  
7 will have on the borrower's estate and heirs.

8 (G) The ability of the borrower to finance alternative living  
9 accommodations such as assisted living or long-term care nursing  
10 home residency, after the borrower's equity is depleted.

11 (2) The checklist required in paragraph (1) shall be signed by  
12 the agency counselor and by the prospective borrower and returned  
13 to the lender along with the certification of counseling required  
14 under subdivision (k) of Section 1923.2, and the loan application  
15 shall not be approved until the signed checklist is provided to the  
16 lender. A copy of the checklist shall be provided to the borrower.